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8 Attorneys for Plaintiffs
9 ESTHER KRENN and ESTATE OF LUIS ANDREW MARTINEZ,
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13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**
17

14	ESTHER KRENN and ESTATE OF	)	CASE NO. CV 07-02295 PVT
15	LUIS ANDREW MARTINEZ,)	
16		)	FIRST AMENDED COMPLAINT
17	Plaintiffs,	)	FOR DAMAGES:
18	vs.)	
19	COUNTY OF SANTA CLARA;	)	1) Violation of Civil Rights
20	SANTA CLARA COUNTY	)	Causing Wrongful Death;
21	SHERIFF'S DEPARTMENT	)	2) Policy, Custom and/or Practice
22	(SCCSD); SANTA CLARA	)	Causing Constitutional
23	DEPARTMENT OF CORRECTION	)	Violations;
24	(DOC); SANTA CLARA VALLEY	)	3) Failure to Train, Supervise
25	HEALTH AND HOSPITAL SYSTEM	)	Causing Constitutional Violation;
26	(SCVHHS); LAURIE SMITH,)	
27	individually and in her official capacity	)	4) Violation of Americans with
28	as Santa Clara County Sheriff;	)	Disabilities Act;
29	EDWARD FLORES, individually and)	
30	in his official capacity as Chief of the	)	5) Violation of Government Code
31	DOC; TOBY WONG, individually and	)	Section 845.6;
32	in his official capacity as Commander)	
33	of Santa Clara County Jail; KIM	)	6) Violation of Civil Code §51 and
34	ROBERTS and ROBERT SILLEN	)	52.1;
35	individually and in their official)	

1 capacities as the Executive Directors of) 7) General Negligence; and
 2 SCVHHS; MARYANN BARRY,)
 3 individually and in her official capacity) 8) Medical Negligence.
 4 as Associate Director and/or Director)
 5 of Acute Psychiatric/Custody Health)
 6 Services of the SCVHHS; DENISE) [DEMAND FOR JURY TRIAL]
 7 BECKER and CHRISTINE FERRY,)
 8 individually and in their official)
 9 capacities as Mental Health Director of)
 10 SVCHHS; BEVERLY PURDY, and)
 11 AMARJIT GREWAL, individually)
 12 and in their official capacity as a)
 13 psychiatrist for SCVHHS Custody)
 14 Health Services; N. MAGER, in her)
 15 official capacity as an employee of)
 16 SCVHHS and in her individual)
 17 capacity; GANG CLASSIFICATION)
 18 OFFICER DELA CRUZ, in his)
 19 official capacity and in his individual)
 20 capacity, and; DOES I-XX in their)
 21 official and individual capacities,)
 22)
 23)
 24)
 25)
 26)
 27)
 28)
 Defendants.)

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 19 **JURISDICTION AND VENUE**

20
 21 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and
 22 1343, and 42 U.S.C. § 12188(a). This Court also has supplemental jurisdiction
 23 over plaintiff's state law causes of action under 28 U.S.C. § 1367.
 24

25 2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
 26 because the events leading up to plaintiffs' claims occurred in this district, Plaintiffs
 27 ESTHER KRENN and the ESTATE OF LUIZ ANDREW MARTINEZ, reside
 28

1 within Santa Clara County, California, and one or more of the Defendants'
2 principal place of business is in the County of Santa Clara.
3

4 **INTRADISTRICT ASSIGNMENT**

5 3. Pursuant to Civil L.R. 3-5, assignment to this division is proper because a
6 substantial part of the events or omissions giving rise to Plaintiff's claims occurred
7 in the counties served by this division.
8

9 **EXHAUSTION OF PRE-LAWSUIT PROCEDURES**

10
11 4. Plaintiff ESTHER KRENN, on behalf of herself and the ESTATE OF LUIS
12 ANDREW MARTINEZ filed governmental tort claims with the COUNTY OF
13 SANTA CLARA on August 8, 2006 as a pre-requisite to the state law claims alleged
14 herein. By correspondence dated October 27, 2006, Defendants rejected plaintiff's
15 governmental tort claims.
16

17 **THE PARTIES**

18
19 5. Plaintiff Esther Krenn ("MS. KRENN"), is the mother of LUIS
20 ANDREW MARTINEZ ("ANDREW MARTINEZ"). ANDREW MARTINEZ
21 had no issue and no spouse. Accordingly, MS. KRENN is ANDREW
22 MARTINEZ's heir at law. She is also suing individually for the wrongful death of
23 her son and for the violation of her First and Fourteenth Amendment rights.
24

25
26 6. Plaintiff ESTATE OF LUIS ANDREW MARTINEZ is represented by
27 MS. KRENN who is authorized to act on behalf of the decedent's successor in
28

1 interest as defined in Cal. Code of Civil Procedure Section 377.11 with respect to
2 the decedent's interest in this action and brings this action as a survival action for
3 injuries and damages suffered prior to his death.

4
5 7. Defendant COUNTY OF SANTA CLARA (hereinafter referred to as
6 "COUNTY"), is a chartered subdivision of the State of California, a public entity,
7 with the capacity to sue and be sued. Defendant COUNTY is responsible for the
8 actions, omissions, policies, procedures, practices and customs of its various agents
9 and agencies, including the SANTA CLARA COUNTY SHERIFF'S
10 DEPARTMENT (hereinafter referred to as "SCCSD"), SANTA CLARA
11 DEPARTMENT OF CORRECTION (hereinafter referred to as "DOC"); SANTA
12 CLARA VALLEY HEALTH AND HOSPITAL SYSTEM (hereinafter referred to as
13 "SCVHHS") and their agents and employees, and is sued in accord with the
14 California Tort Claims Act, Government Code 910 et seq., for the acts and
15 omissions of public employees DOES I through XX, and each of them. At all times
16 relevant to the facts alleged herein, Defendant COUNTY was responsible for
17 assuring that the actions, omissions, policies, procedures, practices and customs of
18 the SCCSD, DOC, and SCVHHS, their employees and agents, Does I through XX,
19 complied with the laws of the State of California and the Constitution of the United
20 States.

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28 8. Defendants DEPARTMENT OF CORRECTION ("DOC") in conjunction

1 with the SANTA CLARA COUNTY SHERIFF'S DEPARTMENT ("SCCSD")
2
3 operate and manage the Santa Clara County Main Jail (hereinafter "Jail" or "Main
4 Jail") and are, and were at all times mentioned herein, responsible for the actions
5 and/or inactions and the policies, procedures and practices/customs of the Jail.
6
7 Defendant SCCSD and DOC are responsible for ensuring the safety of the inmates
8 incarcerated in their facilities. They are also responsible for the provision of
9
10 emergency and basic health care services to all inmates. These defendants are also
11 responsible for reviewing salient health-related policies and procedures for the Jail
12 and the inmates. The Santa Clara Main Jail is one of the facilities for which they
13
14 are responsible.

15 9. Defendant SANTA CLARA VALLEY HEALTH AND HOSPITAL
16 SYSTEM ("SCVHHS") provides health care services, including mental health care
17 services, to the inmates of the Jail. SCVHHS is, and was at all times mentioned
18 herein, responsible for the mental health care related actions and/or inactions and
19
20 the policies, procedures and practices/customs of the Jail involving clinical
21 judgments. Defendant SCVHHS is responsible for maintaining appropriate levels
22
23 of physician, nursing, pharmacy and mental health staff to ensure that safe and
24
25 effective levels of health services are rendered.

26 10. Defendant LAURIE SMITH (hereinafter referred to as "SMITH") is and
27
28 was at all times mentioned herein, the Sheriff of Santa Clara County. She was

1 charged by law and was responsible with the administration of Defendant SCCSD
2 and for the supervision, training and hiring of persons, agents and employees
3 working within said SCCSD, including deputies, nurses, doctors, physician
4 assistant, medical staff, mental health staff and Does I through XX, inclusive.
5
6 Defendant SMITH is and was responsible for the promulgation of the policies and
7 procedures and allowance of the practices/customs pursuant to which the acts of the
8 employees of the Jail alleged herein were committed. Defendant SMITH was
9 responsible to ensure appropriate staffing levels for custodial staff were maintained
10 at the Main Jail. Defendant SMITH is being sued in his individual and official
11 capacities.
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15 11. Defendant EDWARD FLORES (“FLORES”) is, and was at all times
16 mentioned herein, the Chief of Correction, the highest position in the
17 DEPARTMENT OF CORRECTION. As Chief of Correction, Defendant FLORES
18 was charged by law and was responsible with the administration of Defendant DOC
19 and for the supervision, training and hiring of persons, agents and employees
20 working within said DOC, including deputies, nurses, doctors, physician assistant,
21 medical staff, mental health staff and Does I through XX, inclusive. Defendant
22 FLORES is and was also responsible for the promulgation of the policies and
23 procedures and allowance of the practices/customs pursuant to which the acts of the
24 DEPARTMENT OF CORRECTION alleged herein were committed. Defendant
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1 FLORES was responsible to ensure appropriate staffing levels for custodial staff
2
3 were maintained at the Main Jail. Defendant FLORES is being sued in his
4 individual and official capacities.

5 12. Defendant TOBY WONG is, and was at relevant times mentioned herein,
6
7 the commander of the Jail. Defendant WONG is and was responsible for the
8 training and supervision of all Jail employees and/or agents, including Defendants
9
10 DOES I and IV through XX. Defendant WONG is and was responsible for the
11 promulgation of the policies and procedures and allowance of the practices/customs
12 pursuant to which the acts of the employees of the Jail alleged herein were
13
14 committed. Defendant WONG was responsible to ensure appropriate staffing levels
15 for custodial staff were maintained at the Main Jail. Defendant WONG is being
16
17 sued in his individual and official capacities.

18 13. Defendant KIM ROBERTS is, and was at relevant times mentioned
19
20 herein, the Acting Executive Director of SCVHHS. Defendant ROBERT SILLEN
21 was, at relevant times prior to March 20, 2006, the Executive Director of
22
23 SCVHHS. During their respective employment by SCVHHS, Defendants
24
25 ROBERTS and SILLEN are and were responsible for the training and supervision
26
27 of all SCVHHS employees and/or agents, including Defendants DOES II through
28
29 promulgation of the policies and procedures and allowance of the practices/customs

1 pursuant to which the acts and omissions of the SCVHHS alleged herein were
2 committed. They are both being sued in their individual and official capacities.
3

4 14. Defendant DOE I is, and was at all relevant times alleged herein, the
5 Medical Director of Defendant SCVHHS Adult Custody Health Services.

6
7 Defendant DOE I is and was at all relevant times alleged herein the responsible
8 physician and the authority on all matters that require medical judgment. Defendant
9 DOE I is being sued in his or her individual and official capacities.
10

11 15. Defendant MARYANN BARRY is, and was at relevant times alleged
12 herein, the Associate Director and/or Director of Acute Psychiatry/Custody Health
13 Services of SCVHHS. Defendant BARRY is and was responsible for the training
14 and supervision of SCVHHS employees and/or agents, including Defendants DOES
15 II through XX. Defendant BARRY is and was also responsible for the
16 promulgation of the policies and procedures and allowance of the practices/customs
17 pursuant to which the acts and omissions of the SCVHHS alleged herein were
18 committed. Defendant BARRY is being sued in her individual and official
19 capacities.
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24 16. Defendant CHRISTINE FERRY is, and was at relevant times alleged,
25 herein Mental Health Director of SVCHHS Custody Health Services. Defendant
26 FERRY is and was responsible for the training and supervision of SCVHHS
27 employees and/or agents, including Defendants DOES II through X. Defendant
28

1 FERRY is and was also responsible for the promulgation of the policies and
2
3 procedures and allowance of the practices/customs pursuant to which the acts and
4 omissions of the SCVHHS alleged herein were committed. Defendant FERRY is
5 being sued in her individual and official capacities.

6
7 17. Defendant DENISE BECKER is, and was at relevant times mentioned
8 herein, Health Care Program Manager of the Jail. Defendant BECKER is and was
9 also responsible for the promulgation of the policies and procedures and allowance
10 of the practices/customs pursuant to which the acts and omissions of the SCVHHS
11 alleged herein were committed. Defendant BECKER is being sued in her individual
12 and official capacities.
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15 18. Defendant Dr. BEVERLY PURDY is, and was at relevant times
16 mentioned herein, a psychiatrist with SCVHHS Custody Health Services.
17 Defendant PURDY treated ANDREW MARTINEZ during his incarceration at the
18 Main Jail. Defendant PURDY is being sued in her individual and official
19 capacities.
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22 19. Defendant AMARJIT GREWAL is, and was at relevant times mentioned
23 herein, a psychiatrist with SCVHHS Custody Health Services. Defendant
24 GREWAL treated ANDREW MARTINEZ during his incarceration at the Main
25 Jail. Defendant GREWAL is being sued in his individual and official capacities.
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28 20. Defendant N. MAGER was at relevant times mentioned herein, an

1 employee of SCVHHS who worked on unit 8A. Defendant MAGER was a social
2 services staff member involved in the deciding where to house those with mental
3 health disabilities like ANDREW MARTINEZ. Defendant MAGER made
4 recommendations regarding the housing of ANDREW MARTINEZ. Defendant
5 MAGER is sued in her individual and official capacities.
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8 21. Defendant Gang Classification Officer DELA CRUZ was at relevant times
9 mentioned herein, an employee of Defendant DEPARTMENT OF CORRECTION.
10 Defendant DELA CRUZ was responsible for determining the proper classification
11 and housing for inmates including ANDREW MARTINEZ. Defendant DELA
12 CRUZ is being sued in his individual and official capacities.
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15 22. The true name and identity of Defendant DOE II is presently unknown to
16 plaintiff. Defendant DOE II was at relevant times alleged herein an employee of
17 SCVHHS. Defendant DOE II signed off on ANDREW MARTINEZ's January 12,
18 2006 Medical/Psychiatric Referral Form, recommending that ANDREW
19 MARTINEZ be housed per classification, contrary to a psychiatrist's
20 recommendation that he be housed for special management on unit 8B or 8C.
21 Plaintiff will seek to amend this Complaint as soon as the true name and identity of
22 Defendant DOE II has been ascertained. Defendant DOE II is being sued in his
23 individual and official capacities.
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28 23. Defendant Doe III was at relevant times mentioned herein, an employee of

1 Defendant DEPARTMENT OF CORRECTION. Defendant Doe III was
2 responsible for determining the proper classification and housing for inmates.
3

4 Defendant Doe III decided that ANDREW MARTINEZ had to remain on level 4
5 for at least 2 weeks following his discharge from unit 8A prior to being reclassified
6 and allowed to be housed on one of the special management units, 8B or 8C.
7

8 Defendant Doe III is being sued in his individual and official capacities.

9
10 24. The true name and identity of Defendant DOE IV is presently unknown to
11 plaintiff. Defendant DOE IV was at relevant times alleged herein an employee of
12 SCVHHS. Defendant DOE IV signed off on ANDREW MARTINEZ's May 15,
13 2006 discharge from unit 8A back into the general population. Plaintiff will seek to
14 amend this Complaint as soon as the true name and identity of Defendant DOE IV
15 has been ascertained. Defendant DOE IV is being sued in his individual and official
16 capacities.
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19 25. The true names and identities of Defendants DOE V through DOE X are
20 presently unknown to Plaintiff. Plaintiff alleges on information and belief that each
21 of Defendants DOE V through X was employed by the COUNTY OF SANTA
22 CLARA, and/or the DOC, SCCSD , and/or SCVHHS at the time of the conduct
23 alleged herein. Plaintiff alleges that Defendants DOE V through DOE X, and each
24 of them were deliberately indifferent to ANDREW MARTINEZ's medical needs
25 and safety, failed to provide psychiatric care to him or take other measures to
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1 prevent him from attempting suicide, violated his civil rights, wrongfully caused his
2 death, and/or encouraged, directed, enabled and/or ordered other defendants to
3 engage in such conduct. Plaintiff will seek to amend this Complaint as soon as the
4 true names and identities of Defendants DOE V through DOE X have been
5 ascertained. Plaintiff further alleges that the DOE Defendants violated Plaintiff's
6 First and Fourteenth Amendment rights to familial association and companionship
7 and caused the wrongful death of the ANDREW MARTINEZ.
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11 26. The true names and identities of Defendants DOE XI through DOE XX are
12 presently unknown to plaintiff. Plaintiff alleges on information and belief that each
13 of Defendants DOE XI through DOE XX was employed by the COUNTY OF
14 SANTA CLARA, and/or the DOC, SCCSD, and/or SCVHHS at the time of the
15 conduct alleged herein. Plaintiff alleges that each of Defendants DOE XI through
16 DOE XX was responsible for the training, supervision and/or conduct of the Jail
17 employees and/or agents involved in the conduct alleged herein. Plaintiff alleges
18 that each of Defendants DOE XI through DOE XX was also responsible for and
19 caused the acts and injuries alleged herein. Plaintiff will seek to amend this
20 Complaint as soon as the true names and identities of Defendants DOE XI through
21 DOE XX have been ascertained.
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PRELIMINARY ALLEGATIONS

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2 27. The COUNTY is a public entity and is sued under Title 42 U.S.C. §
3
4 1983 for violations of the First, Eighth and/or Fourteenth Amendments of the
5 United States Constitution, the Americans with Disabilities Act, 42 U.S.C. § 12131
6 (2), § 504 of the Rehabilitation Act of 1973, California state law, the California
7 Tort Claims Act, and the Government Code for the acts and omissions of public
8 employees Does I - XX, and each of them, who at the time they caused Plaintiffs'
9 and ANDREW MARTINEZ's injuries, damages and death were duly appointed,
10 qualified and acting officers, employees, and/or agents of COUNTY, SCCSD,
11 DOC, and/or SCVHHS and acting within the course and scope of their
12 employment and or agency.

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16 28. Plaintiffs allege that the conduct of each defendant deprived ANDREW
17 MARTINEZ of his constitutional right to life, his constitutional right to medical and
18 mental health care for his serious but treatable medical and mental health needs, as
19 well as custodial care and supervision, and caused ANDREW MARTINEZ to suffer
20 grievous harm and physical injuries prior to his death, and ultimately caused his
21 death while he was in the custody of Defendants.

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24 29. Each of the Defendants caused and is responsible for the unlawful conduct
25 and resulting harm by, *inter alia*, personally participating in the conduct, or acting
26 jointly and in concert with others who did so, by authorizing, acquiescing,
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1 condoning, acting, omitting or failing to take action to prevent the unlawful
2 conduct, by promulgating or failing to promulgate policies and procedures pursuant
3 to which the unlawful conduct occurred, by failing and refusing to initiate and
4 maintain adequate training, supervision and staffing with deliberate indifference to
5 Plaintiffs' rights, by failing to maintain proper and adequate policies, procedures
6 and protocols, and by ratifying and condoning the unlawful conduct performed by
7 agents and officers, deputies, medical providers and employees under their direction
8 and control.
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12 30. Whenever and wherever reference is made in this Complaint to any act by
13 Defendants and DOE Defendants, such allegations and references shall also be
14 deemed to mean the acts and failures to act of each Defendant and DOE Defendants
15 individually, jointly or severally.
16

17 **GENERAL ALLEGATIONS**

18
19 31. On May 18, 2005, ANDREW MARTINEZ was 36-year-old man. Having
20 been diagnosed with schizophrenia in 1997, his serious but treatable mental health
21 disabilities required ongoing medical and mental health care and treatment, as well as
22 special housing accommodations.
23

24 32. On or about December 29, 2003, while ANDREW MARTINEZ was a
25 resident at the Jacob Center, a COUNTY funded facility for persons with mental
26 health disabilities, an altercation ensued between him and his caretakers. Contrary
27
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1 to the preference for taking the mentally ill and disabled to Valley Medical Hospital
2 where he could continue medical care and treatment, ANDREW MARTINEZ was
3 arrested and taken into custody.
4

5 33. ANDREW MARTINEZ was booked into the Santa Clara County Main
6 Jail¹ where he was initially placed on unit 8A, the Jail's acute mental health care
7 unit. Plaintiff is informed and believes that Unit 8A has room for about 24
8 individuals and that Units 8B and 8C are sub-acute psychiatric units.²
9

10 34. Medical and mental health services are provided to inmates of Santa Clara
11 County Jails, including the Jail, by employees and/or agents of Defendant
12 SCVHHS.
13

14 35. Defendant SCVHHS is a branch of Defendant SANTA CLARA COUNTY.
15 It is responsible for medical and mental health matters in the Santa Clara County jails
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18 ¹ The Jail is intended to house inmates who (1) have been convicted
19 and sentenced for a period of up to one year; and (2) who are awaiting
20 trial. Plaintiffs are informed and believe that in 2002, the average
21 number of days spent in the Santa Clara County Main Jail was 135. A
22 male charged with, but unsentenced for, a felony stayed in the Main
23 Jail for an average of 159.1 days. As of March 7, 2007, the average
24 number of days spent in Santa Clara County jails is 105, with males
25 charged with but unsentenced for a felony spending an average of 130
26 days in jail.

27 ² Plaintiffs are informed and believe that in 2003-2004,
28 approximately 1,475 individuals were admitted to unit 8A. In addition,
in the two jails for which SCVHHS provides health care services, there
were 29,778 Crisis Referrals to Mental Health for Evaluation, and 447
inmates with serious mental illnesses not housed on 8A. As many as
45% of inmates of the Jail receive medications for mental illness.

1 involving clinical judgments. The Medical Director of Adult Custody Health
2 Services, a department of SCVHHS, is the responsible physician and authority on all
3 matters that require medical judgment. The Medical Director of Adult Custody
4 Health Services is the person responsible for deciding matters related to the extent
5 and level of health care services to be provided to the inmate population.
6

7 36. SCVHHS is responsible for maintaining appropriate levels of physician,
8 nursing, pharmacy and mental health staff to ensure that safe and effective levels of
9 health services are rendered.
10

11 37. Defendants COUNTY OF SANTA CLARA and SCVHHS are and were,
12 with regard to mental health care and treatment and the development of policies and
13 procedures and allowance of practices/customs relating to that care and treatment,
14 responsible for the actions or inactions of employees and/or agents of SCVHHS
15 including, but not limited to Defendants ROBERTS, SILLEN, BARRY, FERRY,
16 BECKER, PURDY, GREWAL, MAGER, and DOES I, II, and IV through XX.
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18 38. Defendants COUNTY OF SANTA CLARA, SCCSD and DOC are and
19 were, with regard to the development of policies and procedures and allowance of
20 practices/customs relating to that provision of medical care and protection of inmates,
21 responsible for the actions or inactions of employees and/or agents of DOC and/or
22 SCCSD including, but not limited to Defendants SMITH, FLORES, WONG, DELA
23 CRUZ and DOES III, and V through XX.
24

25 39. SCCSD and DOC are responsible for maintaining appropriate staffing
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1 levels to ensure the safety of their inmates.

2 40. Plaintiffs are informed and believe that the Santa Clara County Main Jail
3 has four classification levels, with Level 1 being minimum security and Level 4
4 being maximum. Plaintiffs are informed and believe that because the Jail houses
5 more maximum security inmates than it has Level 4 cells, Level 4 inmates are
6 sometimes housed in Level 3 ("high-medium security") cells. California law
7 requires correctional departments to consider an inmate's sex, age, sophistication,
8 seriousness of the crime or charge, physical or mental health needs, and behavior in
9 its classification system, as well as considering the limits of the facility.
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13 41. On January 5, 2004, Defendant GREWAL recommended that ANDREW
14 MARTINEZ be housed on unit 8B, one of the special management housing unit for
15 subacute mental health care. According to jail records, ANDREW MARTINEZ
16 was transferred, instead, to unit 5A.
17
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19 42. On January 27, 2004, ANDREW MARTINEZ was discharged from 5A to
20 general population without appropriate subacute mental health care. He was
21 classified as Level 4, the maximum security level. As such, he was "single-celled"
22 and segregated from other prisoners. Single-celled housing is a known risk factor
23 for suicidality.
24
25

26 43. Plaintiff is informed and believes that ANDREW MARTINEZ was housed
27 as a Level 4 and/or "maximum security" prisoner during his incarceration at the
28

1 Main Jail.

2
3 44. On or about July 4, 2004, ANDREW MARTINEZ cut a 6-inch gash in his
4 wrist with a razor. Following medical treatment at the Santa Clara Valley Medical
5 Center Emergency Room, he was admitted to unit 8A, the Jail's acute mental health
6 care unit. He was discharged from 8A on July 12, 2004. Although the discharging
7 psychiatrist, Defendant GREWAL, recommended special management, ANDREW
8 MARTINEZ was transferred back to a Level 4 cell without the recommended
9 "special management" for subacute mental health care or appropriate follow-up
10 care.
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14 45. The following day, the staff expressed concern that he might attempt
15 suicide again. He was transferred to another unit where he was the subject of 15-
16 minute checks until July 20, 2004, after which he was transferred back to a Level 4
17 cell without "special management" for subacute mental health care or appropriate
18 follow-up care.
19
20

21 46. On or about September 14, 2004, following phone calls from Ms. Krenn
22 expressing concern about her son's condition and the fact that he had become
23 largely mute, ANDREW MARTINEZ was transferred from Level 4 housing to unit
24 8A. He was discharged back to Level 4 housing on September 17, 2004, where he
25 allegedly assaulted two staff members and was returned to unit 8A the following
26 day. He was again discharged to Level 4 housing on September 21, 2004. On
27
28

1 October 19, 2004, he was again admitted to unit 8A. He was ordered discharged to
2 Level 4 housing on or about November 23, 2004 without the recommended
3 “special management” for subacute mental health care or appropriate follow-up
4 care.
5

6
7 47. On or about December 14, 2004, ANDREW MARTINEZ was evaluated
8 to determine whether he was competent to stand trial. The evaluator opined that he
9 was not competent.
10

11 48. On or about January 17, 2005, ANDREW MARTINEZ was again
12 admitted to unit 8A when he reported that he was hearing voices telling him to hurt
13 himself and others.
14

15 49. On January 31, 2005, ANDREW MARTINEZ was again evaluated to
16 determine whether he was competent to stand trial. The second evaluator also
17 opined that he was not competent.
18

19 50. On February 1, 2005, ANDREW MARTINEZ was discharged back into
20 the general population of the jail without the recommended “special management”
21 for subacute mental health care or appropriate follow-up care.
22

23
24 51. On or about May 3, 2005, ANDREW MARTINEZ was again admitted to
25 unit 8A where he stayed until May 6, 2005. He was then discharged to Level 4
26 housing again without the recommended “special management” for subacute
27 mental health care or appropriate follow-up care.
28

1 52. On or about June 8, 2005, the court ordered that ANDREW MARTINEZ
2
3 be committed to the State Hospital and that he be transferred there no later than
4 June 21, 2005.

5 53. On or about June 30, 2005, ANDREW MARTINEZ was finally
6
7 transferred to the State Hospital where he remained until his mental competence
8 was restored and he was returned to court on or about January 10, 2006. The
9
10 discharging psychologist recommended in writing alternate placement while
11 awaiting trial in order to "prevent decompensation." It was also recommended that
12
13 he continue on the same medication regime of two psychotropic medications,
14 Risperidone and Loxitane, anti-shaking medication, Artane, and a medication for
15 panic and seizure disorders, Clonazepam.

16
17 54. Upon his arrival at the State Hospital on or about July 1, 2005, ANDREW
18
19 MARTINEZ reported having thoughts of suicide. He was placed on one-on-one
20 observation for a week, thereafter he was on suicide watch with 15-minute suicide
21 checks until July 22, 2005.

22 55. When he arrived back at the Main Jail, Dr. Anil Sharma recommended
23
24 that he be housed for special management in unit 8B or 8C and wrote on the
25 Medical / Psychiatric Referral Form "needs meds asap or he'll decompensate."

26
27 56. On or about January 12, 2006, Defendant DOE II recommended that
28 ANDREW MARTINEZ be housed per classification. ANDREW MARTINEZ was

1 then housed in a Level 4 cell of the Jail without the recommended "special
2 management" for subacute mental health care or appropriate follow-up care.

3
4 57. In late March 2006, MS. KRENN visited her son, and expressed her
5 concern to Defendant BECKER that she was seeing signs of the beginning of
6 psychosis. Yet, ANDREW MARTINEZ remained in a Level 4 cell until May 1,
7 2006 without the recommended "special management" for subacute mental health
8 care until he attempted to hang himself by tying a bedsheet to the second tier of his
9 housing unit. He was treated in the Santa Clara Valley Medical Center Emergency
10 Room for a sprained neck.
11
12

13
14 58. When he returned to the Main Jail he was placed in unit 8A where he told
15 the admitting nurse: "So much bullshit. I'm getting prison time. I'm tired of
16 hearing voices. I will do it again if I have the chance." The nurse reported his
17 current suicidal ideation and his past suicide attempts on the Psychiatric Admission
18 Nursing Assessment ("PANA") form.
19
20

21 59. On unit 8A, ANDREW MARTINEZ was put on 15-minute suicide
22 checks. All dangerous items were ordered removed from his room. Staff was
23 ordered to assess the potential for self-harm and behavioral changes at every shift.
24

25 60. On May 2, 2006, the day after ANDREW MARTINEZ attempted to kill
26 himself, Defendant PURDY reduced his medications, eliminating his prescription
27 for Loxapine, a medication used for treating schizophrenia.
28

1 61. On May 5, 2006, Defendant PURDY ordered the 15-minute suicide
2 checks discontinued. That same day, ANDREW MARTINEZ told Defendant
3 MAGER that he did not like "all the pressure" in Level 4 housing. He also
4 explained that the pressure from the other Level 4 inmates caused him to refuse
5 mental health care while housed among them. As a result, Defendant MAGER
6 noted that she needed to discuss or look into housing issues with classification
7 officers prior to ANDREW MARTINEZ's discharge from unit 8A.
8
9

10
11 62. On May 9, 2006, Defendant MAGER noted that a stabilization plan for
12 after ANDREW MARTINEZ's discharge from unit 8A would include ongoing
13 observation.
14

15 63. On or about May 10, 2006, Defendant PURDY ordered ANDREW
16 MARTINEZ discharged to a special management unit, unit 8B or 8C. She ordered
17 that ANDREW MARTINEZ be kept on 8A until a bed was available on 8B or 8C.
18 She also noted that "NAN spoke to Class, Pt is reportedly elidgable (sic) for spec
19 mgmt." She scheduled a "follow-up psych MD" appointment for June 20, 2006,
20 six weeks after the discharge order.
21
22

23
24 64. Later that same day, ANDREW MARTINEZ told Defendant MAGER "I
25 think more about hurting myself than other people." Defendant MAGER noted that
26 ANDREW MARTINEZ had "underlying sadness and hopelessness" and that he had
27 "Questionable judgment/impulse control" and that he expressed suicidal ideation.
28

1 65. Defendant MAGER spoke to a classification officer on May 10, 2006
2 about "housing issues." Plaintiff is informed and believes that on or about May 11,
3 2006, Defendant MAGER spoke with Defendant DOE III, a classification officer,
4 who told her that ANDREW MARTINEZ had to go back to Level 4 housing for at
5 least two weeks, prior to being reclassified as 4KQ and eventually allowed to go to
6 unit 8B.
7

8
9
10 66. On or about May 15, 2006, Defendant MAGER spoke with Gang
11 Classification Officer Defendant DELA CRUZ, who told her that ANDREW
12 MARTINEZ had to go back to Level 4 housing for at least 60 days before being
13 reclassified as 4KQ at which point he would be eligible for placement in unit 8B.
14

15 67. Defendant Doe IV signed a Nursing Discharge Summary, discharging
16 ANDREW MARTINEZ from unit 8A to general population on May 15, 2006. He
17 was housed in a maximum security cell without the recommended "special
18 management" for subacute mental health care or appropriate follow-up care.
19

20 Unlike when he was admitted to 8A on May 1, 2006, there was no order that
21 dangerous items be removed from his cell.
22

23
24 68. On May 17, 2006, at approximately 11:25 p.m., ANDREW MARTINEZ
25 took his life by suffocating himself with a plastic bag in his cell.³
26

27 ³ At the time of ANDREW MARTINEZ's death, he had been in the
28 Jail for 674 days, in addition to the 194 days he spent at the Atascadero

1 69. According to the autopsy report, ANDREW MARTINEZ had no
2
3 psychotropic medications in his blood.

4 70. Defendants failed to promulgate appropriate policies, guidelines and
5
6 procedures and have failed to rectify improper practices/customs with regard to the
7
8 mental health treatment and/or health and safety of Santa Clara County Main Jail
9
10 inmates. The failures include, but are not limited to, a failure to meet legal,
11
12 national/professional and medical standards relating to the medical and psychiatric
13
14 care of inmates, a failure to monitor or properly supervise inmates following
15
16 discharge from acute psychiatric units, a failure to ensure that mental health
17
18 professionals' recommendations regarding proper treatment setting are followed, a
19
20 failure to maintain adequate mental health staff for the Jail, a failure to maintain
21
22 adequate custodial staff for the Jail.

23 71. Defendants allowed conditions at the Santa Clara County Main Jail to
24
25 deteriorate causing an environment where health care is ignored and inmate safety is
26
27 disregarded. Such conditions included, but are not limited to, a shortage of Main
28
29 Jail mental health staff, a shortage of psychiatric unit beds for the care and
30
31 treatment of Jail inmates, a failure to provide adequate mental health care and
32
33 supervision outside the acute psychiatric unit, and a failure to maintain appropriate

State Hospital.

1 staffing levels to ensure the safety of single-celled, maximum security inmates.

2
3 72. As a result of the Defendants' deliberate indifference to ANDREW
4 MARTINEZ's serious medical needs and safety resulted in his long term suffering
5 and ultimately death.

6
7 73. As a result of the Defendants' conduct alleged herein, Plaintiff ESTHER
8 KRENN, has lost the lifelong love and companionship of her son. Plaintiff
9 ESTHER KRENN also suffered pecuniary and non-pecuniary damages and
10 ANDREW MARTINEZ suffered prior to his death.

11
12 **CLAIMS FOR RELIEF**

13
14 **FIRST CAUSE OF ACTION FOR VIOLATION OF 42 U.S. CODE § 1983 BY**
15 **PLAINTIFFS AGAINST INDIVIDUAL DEFENDANTS SMITH, FLORES,**
16 **WONG, ROBERTS, SILLEN, BARRY, BECKER, FERRY, PURDY,**
17 **GREWAL, MAGER, CRUZ, AND DOES I-XX, INCLUSIVE.**

18 74. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 72,
19 as though fully set forth herein.

20 75. As set forth above, MS. KRENN and ESTATE OF ANDREW
21 MARTINEZ were subjected to deprivation of rights by Defendants SMITH,
22 FLORES, WONG, ROBERTS, SILLEN, BARRY, BECKER, FERRY, PURDY,
23 GREWAL, MAGER, CRUZ, and DOES I-XX inclusive, acting or pretending to
24 act under color of law and of statutes, or ordinances, regulations, customs and
25 usages of the Law of the United States, State of California and of the County of
26
27
28

1 Santa Clara which rights include, but are not limited to, privileges and immunities
2 secured to Plaintiffs by the Constitution and laws of the United States. By reason of
3 the aforementioned acts, these Defendants, have violated the constitutional rights
4 and liberty interests of Decedent, including those provided in the Eighth and
5 Fourteenth Amendments to the U.S. Constitution and each plaintiff, as well as those
6 which are protected under the First and Fourteenth Amendment's prohibition
7 against depriving a person of a right to family relationships without due process of
8 law.
9

10
11
12 76. At all times herein mentioned, these Defendants and Does I through XX
13 knew, or should have known, of ANDREW MARTINEZ's serious medical,
14 physical and mental health condition, were deliberately indifferent to them ignored
15 them, failed to provide access to and delivery of medical or mental health
16 intervention, care and attention for him.
17

18
19 77. ANDREW MARTINEZ had a long history of serious mental illness, and
20 had been admitted to defendants' acute psychiatric unit at least six times in his two
21 and a half years. He had twice attempted to kill himself while in defendants'
22 custody. Both times, he was housed in maximum security housing. The nature of
23 both attempts was serious, requiring treatment in the emergency room and
24 admission to the acute psychiatric unit. He continued to report suicidal ideations
25 until his death. Accordingly, Defendants knew that ANDREW MARTINEZ was
26
27
28

1 suffering from a mental disability and was a high risk candidate for suicide.

2
3 Nevertheless, they ignored his clear need for medical and mental health care.

4 78. As set forth above, Defendants failed to provide ongoing mental health
5 care and adequate supervision for Andrew Martinez throughout his incarceration in
6 the facility, in particular they failed to provide necessary medical and mental health
7 care and/or supervision following his release from the acute psychiatric unit.

8
9
10 79. Defendants knew and/or had reason to know, that ANDREW MARTINEZ
11 had a serious but treatable mental health condition which required care and
12 treatment. As a result of Defendants' deliberate indifference, ANDREW
13 MARTINEZ was deprived of the necessary and indicated medical intervention, care
14 and treatment. Without proper treatment or follow-up care, his mental state
15 deteriorated, causing him to continue to suffer pain and mental anguish in violation
16 of his Eighth and Fourteenth Amendment rights resulting in his wrongful death.

17
18
19 80. As a legal cause of Defendants' acts and/or inactions, Plaintiffs were
20 deprived of their constitutional rights to familial relationship and ANDREW
21 MARTINEZ suffered serious cruel and unusual punishment and death.

22
23
24 81. The ESTATE OF ANDREW MARTINEZ claims damages as a survivor
25 action and claims as damages the loss of his right to life and of the physical injuries,
26 pain and emotional anguish and trauma he suffered prior to his death.

27
28 82. As a result of these individual Defendants' actions and/or inactions and

1 deliberate indifference to the serious mental/medical health condition and
2 constitutional rights of Plaintiff MS. KRENN suffered loss of society, comfort,
3 companionship, solace, love, affection, services of their son and incurred burial and
4 funeral expenses, and suffered and continue to suffer these damages.
5

6
7 83. By virtue of the provisions of 42 U.S.C., Section 1988, Plaintiffs are
8 entitled to and demand an award of reasonable attorneys' fees and costs according
9 to proof.
10

11 84. Each individual Defendant acted recklessly or with callous indifference to
12 ANDREW MARTINEZ's life threatening physical, medical and/or psychiatric
13 condition and to Plaintiffs' constitutional rights and should be assessed punitive
14 damages.
15

16 **SECOND CLAIM FOR RELIEF**
42 U.S.C. SECTION 1983

17 **MUNICIPAL LIABILITY FOR FOR A POLICY, CUSTOM OR PRACTICE**
18 **CAUSING CONSTITUTIONAL VIOLATIONS OF THE EIGHTH AND/OR**
19 **FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE**
UNITED STATES AGAINST DEFENDANTS COUNTY OF SANTA CLARA,
DOC, SCCSD, SCVHHS, SMITH and FLORES and DOES 5 - 20

20 85. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 84,
21 as though fully set forth herein.

22 86. The aforementioned acts and/or omissions of the defendants in being
23 deliberately indifferent to ANDREW MARTINEZ's serious medical needs and safety
24 and violating Andrew Martinez's civil rights were the direct and proximate result of
25 customs, practices and policies of Defendants COUNTY, SCCSD, DOC, SCVHHS,
26 SMITH, FLORES and DOES V through XX, as alleged herein.

27 87. At all times herein mentioned, Defendants COUNTY, SCCSD, DOC,
28 SCVHHS, SMITH, FLORES, and DOES V through XX, and each of them, maintained

1 a policy or de facto unconstitutional informal custom or practice of permitting,
2 ignoring and condoning, deputies, counselors, officers, doctors, mental health and
3 medical personnel to delay in providing adequate mental health and medical assistance
4 for the protection of the health or safety of detainees/inmates; failing to properly
5 observe and treat detainees/inmates, including inadequate: (1) intake screening and
6 evaluation; (2) diagnosis; (3) referral to mental health professionals; (4) treatment plans;
7 (5) administration and delivery of medications; (6) tracking delivery of medications; (7)
8 medical record keeping; (8) staffing; (9) communication between medical, mental health
9 and custodial staff; (10) housing; (11) classification; (12) supervision; (13) access and
10 delivery of mental/medical health care; and failure to supervise, lax supervision, failure
11 to report, investigate, and reprimand deputy and medical care provider wrongful conduct.

12 88. Plaintiffs allege that Defendants COUNTY, SCCSD, DOC, SMITH and
13 FLORES maintained a policy, custom or practice of understaffing the Main Jail with
14 custody personnel causing a failure to properly monitor single-celled inmates.

15 89. Plaintiffs allege that Defendants COUNTY, SCCSD, DOC, SMITH and
16 FLORES, and maintained a policy, custom or practice of requiring an inmate released
17 from the acute care unit complete his disciplinary time prior to being housed in a non-
18 acute care-step down mental health unit even when such a decision is contrary to
19 medical judgment.

20 90. Plaintiffs allege that Defendants COUNTY, SCVHHS, SCCSD, DOC,
21 ROBERTS, SILLIN, SMITH and FLORES, had maintained a policy, custom or
22 practice of understaffing the Main Jail with mental health personnel.

23 91. Plaintiffs allege that Defendants COUNTY, SCVHHS, SCCSD, DOC,
24 ROBERTS, SILLIN, SMITH and FLORES, had maintained a policy, custom or
25 practice of not engaging in follow-up care and treatment once an inmate was released
26 from acute care to maximum security.

27 92. Each policy, custom or practice posed a substantial risk of serious harm to
28 MARTINEZ and each defendant knew, or in the exercise of reasonable care should

1 have known, its policy posed this risk.

2 93. Policy failures include but are not limited to: the failure to adequately staff
3 the facility, the failure to follow psychiatrists' professional judgment regarding
4 housing to provide for continued mental health care and supervision, the failure to
5 provide continued mental health care and supervision for inmates released from the
6 acute psychiatric unit into the general population, and the policy or custom of
7 permitting or encouraging changes to psychiatric professional judgment regarding
8 housing based on factors other than the inmate's mental health needs and safety are
9 indicative of the deliberate indifference to the mental health needs and safety of Jail
10 inmates. These customs, practices or policies were the legal cause of Plaintiffs'
11 injuries, and each individual Defendant acting in accord with this custom, policy or
12 practice acted with deliberate indifference to the needs of persons such as ANDREW
13 MARTINEZ, who was in the custody and care of Defendants.

14 94. These policies, customs or practices were a cause of the Plaintiffs' damages
15 and injuries as alleged above.

16
17 **THIRD CLAIM FOR RELIEF**
42 U.S.C. SECTION 1983

18 **AGAINST DEFENDANTS COUNTY, SCCSD, DOC, SCVHHS,**
19 **SMITH, FLORES, WONG, ROBERTS, SILLEN, FERRY, BARRY,**
20 **BECKER, PURDY, GREWAL, AND DOES IV THROUGH XX,**
INCLUSIVE FOR FAILURE TO TRAIN AND SUPERVISE CAUSING
CONSTITUTIONAL VIOLATIONS.

21 95. Plaintiffs restate and reiterate Paragraphs 1 through 94 of this
22 Complaint and incorporate them here by reference as though fully set forth herein.

23 96. Plaintiffs are informed and believe and thereon allege Defendants
24 **COUNTY, SCCSD, DOC, SCVHHS, SMITH, FLORES, WONG, ROBERTS,**
25 **SILLEN, FERRY, BARRY, BECKER, PURDY, GREWAL, AND DOES IV**
26 **THROUGH XX**, inclusive, each had a history and propensity for acts of the nature
27 complained of herein and manifested such propensity prior to and during their
28 employment and/or agency with these Defendants. Plaintiffs are further informed

1 and believe and thereon allege that these Defendants and Does IV - XX, knew, or
2 in the exercise of reasonable care should have known, of such prior history and
3 propensity at the time such individuals were hired and/or during the time of their
4 employment. These Defendants' disregard of this knowledge and/or failure to
5 adequately investigate and discover and correct such facts caused the violation of
6 Plaintiffs' constitutional rights.

7 97. Plaintiffs are informed and believe and thereon allege that prior to the
8 incident alleged herein, sheriff deputies and jailers and health care providers
9 employed and appointed by COUNTY, DOC and/OR SCCSD, and prior to the
10 commission of the acts complained of herein, Defendants Does IV - XX, acting
11 under the color of their authority as deputies and health care providers and in the
12 course and scope of their employment as such, committed similar acts of failure to
13 supervise subordinates regarding deliberate indifference to the necessity to protect
14 inmates, to report deputy wrongful conduct, to provide access and delivery of
15 mental/medical care and life saving care and attention to inmates and detainees who
16 were suicidal and/or suffering from mental disabilities. Plaintiffs are further
17 informed and believe and thereon allege that these Defendants, and Does IV - XX,
18 knew, or in the exercise of reasonable care, should have known of this custom,
19 policy, pattern or practice of unconstitutional violations, or in the existence of facts
20 which creates the potential of unconstitutional acts, and these Defendants, and Does
21 IV - XX, had a duty to investigate their subordinates, and to instruct their
22 subordinates to prevent similar acts to other persons, but failed to take steps to
23 properly train, supervise, investigate or instruct deputies, jailers, and medical
24 personnel, such as nurses, physician assistants and physicians, and as a result
25 Plaintiffs were harmed in the manner threatened by the failure to train, supervise,
26 investigate or instruct.

27 98. At all times herein mentioned, and prior thereto, these Defendants and
28 Does IV - XX had the duty:

- 1 a. to train, supervise, and instruct deputies, jailers, nurses, mental
- 2 health professionals and clinicians, physician assistants,
- 3 physicians, and other agents to ensure that they respected and
- 4 did not violate federal constitutional and statutory rights of
- 5 detainees and inmates;
- 6 b. to objectively investigate incidents of in-custody death or
- 7 injuries to inmates and detainees;
- 8 c. to provide mental/medical intervention and attention to injured,
- 9 ill detainee or inmates which resulted in serious injury or loss of
- 10 life;
- 11 d. to periodically monitor an detainee/inmate's serious
- 12 mental/medical condition which may result in serious injury or
- 13 loss of life;
- 14 e. to periodically monitor the quality of mental/medical care,
- 15 attention and treatment provided to ill inmates and detainees;
- 16 f. to periodically monitor the adequacy of mental/medical and
- 17 custodial staffing to ensure adequacy of medical care, treatment,
- 18 and attention rendered to ill inmates and detainees;
- 19 g. to comply with the statutory guidelines and regulations enacted
- 20 for the protection of persons held in custodial setting; and/or
- 21 h. to discipline and to establish procedures to correct past
- 22 violations, and to prevent future occurrences of violation of
- 23 constitutional rights to inmates and prisoners, by not condoning,
- 24 ratifying, and/or encouraging the violation of Plaintiffs' and
- 25 other detainee and inmates constitutional rights;
- 26 99. These Defendants and Does IV - XX, breached said duties by:
- 27 a. failing to train and supervise and instruct deputies, nurses,
- 28 physician assistant, mental health professionals and clinicians,

- 1 physicians, and agents, on the violation of Plaintiff's and other
2 detainee and prisoners constitutional rights.
- 3 b. failing to objectively investigate in-custody use of excessive
4 force, and in-custody deaths or injury to the mentally ill;
- 5 c. the failure to provide medical intervention care and attention for
6 injured or ill detainees or inmates which resulted in serious
7 injury or loss of life;
- 8 d. the failure to periodically monitor an detainee or inmate's
9 mental/medical condition which resulted in serious injury or loss
10 of life;
- 11 e. the failure to periodically monitor the quality of mental/medical
12 care, attention and treatment provided to ill inmates and
13 detainee;
- 14 f. the failure to periodically monitor the adequacy of
15 mental/medical and custodial staffing to ensure adequacy of
16 medical care, treatment, and attention rendered to ill inmates
17 and detainees;
- 18 g. the failure to comply with the statutory guidelines and
19 regulations enacted for the protection of persons held in
20 custodial settings; and/or
- 21 h. failing to discipline and to establish procedures to correct past
22 violations, and to prevent future occurrences of violation of
23 constitutional rights to inmates and prisoners, by condoning,
24 ratifying, and/or encouraging the violation of Plaintiff's and
25 other detainees' and prisoners' constitutional rights.

26 100. The aforementioned acts and/or omissions of the defendants were
27 deliberately indifferent to Andrew Martinez's serious medical needs and safety.
28 Defendants SMITH FLORES, WONG, ROBERTS, SILLEN, FERRY, BARRY,

1 BECKER, PURDY, GREWAL and DOES IV through XX, inclusive tacitly
2 encouraged, ratified and/or approved of defendants' failure to maintain adequate
3 mental health staffing and facilities and custody staffing so as to provide mental
4 health care to mentally ill inmates, defendants' failure to house mentally ill inmates
5 according to their medical needs, defendants' failure to follow psychiatrists'
6 professional judgments regarding the proper treatment setting, defendants' failure
7 to provide adequate continuation of mental health care and supervision following
8 discharge from the acute psychiatric unit, and defendants' failure to take precautions
9 to prevent suicide for high risk inmates.

10 101. As a direct and proximate result of the Defendants and Does IV - XX
11 aforementioned customs, policies and/or practices resulting in the failures to train,
12 supervise and/or discipline of said, plaintiffs suffered injuries and damages as
13 alleged herein.

14 **FOURTH CLAIM FOR VIOLATION OF TITLE II - ADA,**
15 **REHABILITATION ACT AND THE CALIFORNIA UNRUH ACT**
16 **(AGAINST DEFENDANTS COUNTY, SCCSD, DOC, AND SCVHHS.)**

17 102. Plaintiffs reallege and incorporate by reference the allegations of
18 preceding paragraphs 1 through 101, inclusive, as though fully set forth herein.

19 103. ANDREW MARTINEZ was a "qualified individual," with a mental
20 and medical impairment that limited and/or substantially limited his ability to care
21 for himself and control his mental, medical or physical health condition as defined
22 under the ADA, 42 U.S.C. § 12131 (2), under Section 504 of the Rehabilitation
23 Act of 1973, 29 U.S.C. § 794, 28 C.F.R. §540(1)(2), 28 C.F.R. §42.540 (k), and
24 Cal.Civ. Code §51, Cal. Gov't Code §12926.1, and qualified as an individual with
25 a mental and physical disability under California law, and he met the essential
26 eligibility requirements of COUNTY and SCCSD, DOC, AND SCVHHS
27 programs to provide access to medical and mental health care services for its
28 detainee/inmates patients in SCCSD and DOC jails and while in custody.

104. COUNTY, SCCSD, DOC, AND SCVHHS, and County mental health

1 services are a place of public accommodation and a covered entity for purposes of
2 enforcement of the ADA, 42 U.S.C. §12181 (7)(F), the Rehabilitation Act, 29
3 U.S.C. § 794, 51 Cal. Civil Code and 12926 of Cal. Govt. Code, and Cal. Civ.
4 Code §51 et seq., explicated by the regulations promulgated under each of these
5 laws.

6 105. COUNTY, SCCSD, DOC, AND SCVHHS and County mental health
7 services "engaged in the business of . . . health care," custody for persons whose
8 "operations" fall within the definition of "program or activity" covered by the
9 Rehabilitation Act, 29 U.S.C. Section 749(b), and State Human Rights Law, Cal.
10 Civil Code § 51.

11 106. COUNTY, SCCSD, DOC, AND SCVHHS, and County mental health
12 services are mandated to "develop an effective, integrated, comprehensive system
13 for the delivery of all services to persons with mental disabilities and developmental
14 disabilities . . . " and to ensure "that the personal and civil rights" of persons who
15 are receiving services under its aegis are protected.

16 107. Congress enacted the ADA upon a finding, among other things, that
17 "society has tended to isolate and segregate individuals with disabilities" and that
18 such forms of discrimination continue to be a "serious and pervasive social
19 problem." 42 U.S.C. § 12101 (a)(2).

20 108. COUNTY, SCCSD, DOC, AND SCVHHS, and County mental health
21 services are mandated under the ADA not to "discriminate against [any individual]
22 on the basis of disability in the full and equal enjoyment of the goods, services,
23 facilities, privileges, advantages, or accommodations of any place of public
24 accommodation." 42 U.S.C. § 12182 (a).

25 109. 42 U.S.C. § 12182(b)(1)(A)(3) provides in pertinent part that "it shall
26 be discriminatory to afford an individual or class of individuals, on the basis of a
27 disability or disabilities of such individual or class, directly, or through
28 contractual licensing, or other arrangements, with a good, service, facility,

1 privilege, advantage, or accommodation that is different or separate from that
2 provided to others" (emphasis added).

3 110. COUNTY, SCCSD, DOC, AND SCVHHS, and County Department of
4 Mental Health violated the ADA and deprived decedent ANDREW MARTINEZ
5 and Plaintiffs of their federally and state protected rights by: (a) creating and
6 maintaining a jail without sufficient staffing levels to provide responsible subacute
7 care and supervision to ensure that the mentally disabled prisoners do not harm
8 themselves, (b) failing to provide competent health care to mentally disabled and
9 physically disabled detainees/inmates, (c) failing to provide indicated and
10 appropriate classification and housing, (d) failing to provide reasonable
11 accommodations to people with mental disabilities at their clinics, and providing
12 instead quality of care and service that is different, separate, and worse than the
13 service provided to other individuals.

14 111. The individual Defendants acted recklessly to Plaintiffs' federally and
15 State protected rights.

16 112. ANDREW MARTINEZ was denied the benefits of the services,
17 programs, and activities of the COUNTY, SCCSD, DOC, AND SCVHHS, mental
18 and medical health care, treatment, follow-up and supervision. This denial of
19 mental and medical health care, treatment, follow-up and supervision, was the
20 result of his disability.

21 113. As a result of the acts and misconduct of the Defendants complained
22 of herein, Plaintiff ANDREW MARTINEZ died and Plaintiffs have suffered, are
23 now suffering and will continue to suffer damages and injuries as alleged above.

24 **FIFTH CAUSE OF ACTION BY PLAINTIFFS AGAINST ALL**
25 **DEFENDANTS FOR GENERAL NEGLIGENCE**
26 **(Against All Defendants)**

27 114. Plaintiffs reallege and incorporate by reference the allegations in
28 paragraphs through 113 inclusive, as though fully set forth herein.

115. While ANDREW MARTINEZ was under the sole and exclusive care

1 of Defendants, and each of them, and Does I-XX, and in Defendants' custody,
2 Defendants, acting within the scope and course of their employment with defendants
3 and their employees and agents, negligently, carelessly and unskillfully cared for,
4 attended, handled, controlled and failed to supervise, monitor and attend to
5 ANDREW MARTINEZ and/or battered and assaulted and/or failed to refer him to
6 medical care providers, negligently failed to provide physician's care and carelessly
7 failed to detect and monitor decedent's condition, and negligently, carelessly and
8 unskillfully failed to possess and exercise that degree of skill and knowledge
9 ordinarily possessed and exercised by others in the same profession and in the same
10 locality as defendants, and each of them. Defendants and each of them failed to
11 supervise, train and monitor their subordinates, to maintain proper supervision,
12 classification and staffing and to timely refer ANDREW MARTINEZ for medical,
13 psychiatric, hospital care and/or psychiatric care.

14 116. Plaintiffs further allege that the supervisory Defendant personnel,
15 including agents and employees of defendant COUNTY, SCCSD, DOC, and
16 SCVHHS failed to conduct appropriate investigatory procedures to determine the
17 need to obtain medical and psychiatric services to ANDREW MARTINEZ while
18 in the defendants' care, custody and control, and failed to have proper investigation
19 and reports of allegations of subordinates wrongful conduct.

20 117. The ESTATE OF ANDREW MARTINEZ claims damages as a
21 survivor action and claims damages in accord with law.

22 118. As a legal result of Defendants' actions and inactions to the serious
23 injuries and mental/medical condition of ANDREW MARTINEZ, Plaintiffs
24 suffered damages as alleged above.

25 **SIXTH CAUSE OF ACTION ALLEGING MEDICAL NEGLIGENCE**
26 **AGAINST DEFENDANTS AND DOE DEFENDANTS.**

27 119. Plaintiffs reallege and incorporate by reference the allegations of
28 preceding paragraphs 1 through 118, inclusive, as though fully set forth herein.

1 120. While ANDREW MARTINEZ was under the sole and exclusive care
2 of Defendants and Does 1-10, Defendants, acting within the scope and course of
3 their employment with Defendants negligently, carelessly and unskillfully cared for,
4 attended, handled, controlled and failed to supervise, monitor, failed to follow-up,
5 abandoned, ANDREW MARTINEZ and failed to refer him to specialist
6 mental/medical care providers, negligently failed to provide physician, psychiatric,
7 psychological care and carelessly failed to detect, monitor, and follow-up with
8 ANDREW MARTINEZ's condition, and negligently, carelessly and unskillfully
9 failed to possess and exercise that degree of skill and knowledge ordinarily
10 possessed and exercised by others in the same profession and in the same locality
11 as Defendants, and each of them.

12 121. Defendants and each of them failed to supervise, train and monitor
13 their subordinates, to maintain proper supervision, classification and staffing and
14 to timely refer ANDREW MARTINEZ for medical, psychiatric, hospital care
15 and/or psychiatric care and to ensure the care and treatment ordered for ANDREW
16 MARTINEZ was provided. Plaintiffs further allege that other presently unknown
17 supervisory personnel named as Doe defendants, including agents and employees
18 of COUNTY, SCCSD, DOC, AND SCVHHS, failed to conduct appropriate
19 investigatory procedures to determine the need to obtain medical and psychiatric
20 services to ANDREW MARTINEZ while in the defendant's care, custody and
21 control.

22 122. As a direct and legal result of the aforesaid negligence, carelessness
23 and As a legal result of the aforesaid negligence, carelessness and unskillfulness of
24 defendants, and each of them, ANDREW MARTINEZ's mental health condition
25 did not receive timely appropriate and indicated intervention and treatment and his
26 condition resulted in his death and he died as a legal cause of the negligent conduct
27 of Defendants, thereby causing damage to all Plaintiffs in an amount according to
28 proof.

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SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS SMITH, FLORES, WONG, ROBERTS, SILLEN, BARRY, BECKER, FERRY, PURDY, GREWAL, MAGER, CRUZ, AND DOES I-XX, INCLUSIVE FOR VIOLATION OF CAL. GOV'T CODE § 845.6

123. Plaintiffs reallege and incorporate by reference the allegations of preceding paragraphs 1 through 122, inclusive, as though fully set forth herein.

124. Pursuant to Cal. Gov. Code § 845.6, these Defendants and Doe Defendants 1-10, had a duty to monitor, check and respond to the persons under their custody, supervision and control.

125. Defendants, knew or had reason to know that ANDREW MARTINEZ was in need of immediate medical care, and on-going follow-up medical care, and failed to take reasonable action to summon such medical care.

126. As a result of Defendants breach of said duty to take reasonable action to summon such medical care to ANDREW MARTINEZ, all Plaintiffs have suffered damages as set forth herein.

WHEREFORE, Plaintiffs pray for relief as follows:

1. For general damages according to proof;
2. For compensatory damages according to proof;
3. For and punitive damages against the appropriate defendants;
3. For funeral and burial expenses according to proof;
4. For other losses in an amount according to proof;
5. For costs of suit;
6. For attorneys' fees and costs pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, 29 U.S.C. § 794a(b), and Cal. Civil Code §52 and 52.1; and as otherwise authorized by statute or law;
7. For declaratory relief as the court deems appropriate including that the policies of the COUNTY, SCCSD, DOC, SMITH and FLORES for the mental health, medical and custody staffing levels maintained at

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the Main Jail fall below constitutional standards; and that the policy or policies relevant to the follow up care of those prisoners released from the acute care facility or hospital to a lower level of care fell below constitutional standards; and

8. For such other relief as the Court deems proper

Dated: June 13, 2007

Respectfully submitted,

LAW OFFICES OF GERI LYNN GREEN, LC

By: /S/
Geri Lynn Green
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: June 13, 2007

Respectfully submitted,

LAW OFFICES OF GERI LYNN GREEN, LC

By: /S/
Geri Lynn Green
Attorneys for Plaintiff